

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:11-CR-17-BO

UNITED STATES OF AMERICA,)
)
)
v.)
)
DERRICK D. WHITAKER,)
)

ORDER

This cause comes before the Court on a motion by defendant, proceeding *pro se*, to review sentence pursuant to 18 U.S.C. § 3742(a)(1)(2). Defendant also seeks to proceed *in forma pauperis* and to preserve the right to supplement or amend his pleadings under Rule 15 of the Federal Rules of Civil Procedure.


In his motion for review, defendant challenges the application of the career offender enhancement to his sentencing guidelines. *See* U.S.S.G. 4B1.1. Defendant further raises a claim for ineffective assistance of counsel for failure to challenge his designation as a career offender. 18 U.S.C. § 3742 does not, however, “grant jurisdiction to a district court to review a final sentence.” *United States v. Auman*, 8 F.3d 1268, 1271 (8th Cir. 1993).

It would appear from defendant’s filings that the relief he seeks is that which would result from a successful motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Accordingly, notice is hereby given to defendant that the Court intends to construe his motion pursuant to 18 U.S.C. § 3742 as a motion pursuant to 28 U.S.C. § 2255. The Court ALLOWS defendant thirty (30) days from the filing of this notice to confirm or deny his intent to file a motion to vacate pursuant to 28 U.S.C. § 2255. If a response is not filed within this time, this Court will presume that defendant is not seeking such relief and his § 3742 motion will

be dismissed. Should defendant notify this Court of his intention to file a § 2255 motion, the Clerk of Court is DIRECTED to provide defendant with the appropriate forms on which to file such a motion.

The Court further warns defendant of the effects of filing a motion pursuant to § 2255, and advises him as to the requirements of § 2255. *See Castro v. United States*, 540 U.S. 375, 377, 383 (2003); *see also United States v. Emmanuel*, 288 F.3d 644, 649 (4th Cir. 2002). Defendant's motion for leave to proceed *in forma pauperis* [DE 30] and motion to preserve right to supplement or amend [DE 32] are DENIED as MOOT.

SO ORDERED, this 5 day of August, 2014.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE